

## **IC 12-10-17**

### **Chapter 17. Individuals in Need of Self-Directed In-Home Care**

## **IC 12-10-17-1**

### **Applicability of chapter**

Sec. 1. This chapter does not apply to the following:

- (1) An individual who provides attendant care services and who is employed by and under the direct control of a home health agency (as defined in IC 12-15-34-1).
- (2) An individual who provides attendant care services and who is employed by and under the direct control of a licensed hospice program under IC 16-25.
- (3) An individual who provides attendant care services and who is employed by and under the control of an employer that is not the individual who is receiving the services.
- (4) A practitioner (as defined in IC 25-1-9-2) who is practicing under the scope of the practitioner's license (as defined in IC 25-1-9-3).

*As added by P.L.255-2001, SEC.11.*

## **IC 12-10-17-2**

### **"Ancillary services" defined**

Sec. 2. As used in this chapter, "ancillary services" means services ancillary to the basic services provided to an individual in need of self-directed in-home care who needs at least one (1) of the basic services (as defined in section 4 of this chapter). The term includes the following:

- (1) Homemaker type services, including shopping, laundry, cleaning, and seasonal chores.
- (2) Companion type services, including transportation, letter writing, mail reading, and escort services.
- (3) Assistance with cognitive tasks, including managing finances, planning activities, and making decisions.

*As added by P.L.255-2001, SEC.11.*

## **IC 12-10-17-3**

### **"Attendant care services" defined**

Sec. 3. As used in this chapter, "attendant care services" means those basic and ancillary services, which the individual chooses to direct and supervise a personal services attendant to perform, that enable an individual in need of self-directed in-home care to live in the individual's home and community rather than in an institution and to carry out functions of daily living, self-care, and mobility.

*As added by P.L.255-2001, SEC.11.*

## **IC 12-10-17-4**

### **"Basic services" defined**

Sec. 4. As used in this chapter, "basic services" means a function that could be performed by the individual in need of self-directed in-home care if the individual were not physically disabled. The term

includes the following:

- (1) Assistance in getting in and out of beds, wheelchairs, and motor vehicles.
- (2) Assistance with routine bodily functions, including:
  - (A) health related services (as defined in section 5 of this chapter);
  - (B) bathing and personal hygiene;
  - (C) dressing and grooming; and
  - (D) feeding, including preparation and cleanup.

*As added by P.L.255-2001, SEC.11.*

#### **IC 12-10-17-5**

##### **"Health related services" defined**

Sec. 5. As used in this chapter, "health related services" means those medical activities that, in the written opinion of the attending physician submitted to the case manager of the individual in need of self-directed in-home care, could be performed by the individual if the individual were physically capable, and if the medical activities can be safely performed in the home, and:

- (1) are performed by a person who has been trained or instructed on the performance of the medical activities by an individual in need of self-directed in-home care who is, in the written opinion of the attending physician submitted to the case manager of the individual in need of self-directed in-home care, capable of training or instructing the person who will perform the medical activities; or
- (2) are performed by a person who has received training or instruction from a licensed health professional, within the professional's scope of practice, in how to properly perform the medical activity for the individual in need of self-directed in-home care.

*As added by P.L.255-2001, SEC.11. Amended by P.L.134-2002, SEC.1.*

#### **IC 12-10-17-6**

##### **"Individual in need of self-directed in-home care" defined**

Sec. 6. As used in this chapter, "individual in need of self-directed in-home care" means a disabled individual, or person responsible for making health related decisions for the disabled individual, who:

- (1) is approved to receive Medicaid waiver services under 42 U.S.C. 1396n(c), or is a participant in the community and home options to institutional care for the elderly and disabled program under IC 12-10-10;
- (2) is in need of attendant care services because of impairment;
- (3) requires assistance to complete functions of daily living, self-care, and mobility, including those functions included in attendant care services;
- (4) chooses to self-direct a paid personal services attendant to perform attendant care services; and
- (5) assumes the responsibility to initiate self-directed in-home

care and exercise judgment regarding the manner in which those services are delivered, including the decision to employ, train, and dismiss a personal services attendant.

*As added by P.L.255-2001, SEC.11.*

#### **IC 12-10-17-7**

##### **"Licensed health professional" defined**

Sec. 7. As used in this chapter, "licensed health professional" means the following:

- (1) A registered nurse.
- (2) A licensed practical nurse.
- (3) A physician with an unlimited license to practice medicine or osteopathic medicine.
- (4) A licensed dentist.
- (5) A licensed chiropractor.
- (6) A licensed optometrist.
- (7) A licensed pharmacist.
- (8) A licensed physical therapist.
- (9) A certified occupational therapist.
- (10) A certified psychologist.
- (11) A licensed podiatrist.
- (12) A licensed speech-language pathologist or audiologist.

*As added by P.L.255-2001, SEC.11.*

#### **IC 12-10-17-8**

##### **"Personal services attendant" defined**

Sec. 8. As used in this chapter, "personal services attendant" means an individual who is registered to provide attendant care services under this chapter and who has entered a contract with an individual and acts under the individual's direction to provide attendant care services that could be performed by the individual if the individual were physically capable.

*As added by P.L.255-2001, SEC.11.*

#### **IC 12-10-17-9**

##### **"Self-directed in-home health care" defined**

Sec. 9. As used in this chapter, "self-directed in-home health care" means the process by which an individual, who is prevented by a disability from performing basic and ancillary services that the individual would perform if not disabled, chooses to direct and supervise a paid personal services attendant to perform those services in order for the individual to live in the individual's home and community rather than an institution.

*As added by P.L.255-2001, SEC.11.*

#### **IC 12-10-17-10**

##### **Registration requirement; prohibitions**

Sec. 10. (a) An individual may not provide attendant care services for compensation from Medicaid or the community and home options to institutional care for the elderly and disabled program for an

individual in need of self-directed in-home care services unless the individual is registered under section 12 of this chapter.

(b) An individual who is a legally responsible relative of an individual in need of self-directed in-home care, including a parent of minor individual and a spouse, is precluded from providing attendant care services for compensation under this chapter.

*As added by P.L.255-2001, SEC.11.*

#### **IC 12-10-17-11**

##### **Entities to register with**

Sec. 11. An individual who desires to provide attendant care services must register with the division or with an organization designated by the division.

*As added by P.L.255-2001, SEC.11.*

#### **IC 12-10-17-12**

##### **Registration of personal services attendants**

Sec. 12. (a) The division shall register an individual who provides the following:

- (1) A personal resume containing information concerning the individual's qualifications, work experience, and any credentials the individual may hold. The individual must certify that the information contained in the resume is true and accurate.
- (2) The individual's limited criminal history check from the Indiana central repository for criminal history information under IC 10-13-3 or another source allowed by law.
- (3) If applicable, the individual's state nurse aide registry report from the state department of health. This subdivision does not require an individual to be a nurse aide.
- (4) Three (3) letters of reference.
- (5) A registration fee. The division shall establish the amount of the registration fee.
- (6) Proof that the individual is at least eighteen (18) years of age.
- (7) Any other information required by the division.

(b) A registration is valid for two (2) years. A personal services attendant may renew the personal services attendant's registration by updating any information in the file that has changed and by paying the fee required under subsection (a)(5). The limited criminal history check and report required under subsection (a)(2) and (a)(3) must be updated every two (2) years.

(c) The division and any organization designated under section 11 of this chapter shall maintain a file for each personal services attendant that contains:

- (1) comments related to the provision of attendant care services submitted by an individual in need of self-directed in-home care who has employed the personal services attendant; and
- (2) the items described in subsection (a)(1) through (a)(4).

(d) Upon request, the division shall provide to an individual in need of self-directed in-home care the following:

(1) Without charge, a list of personal services attendants who are registered with the division and available within the requested geographic area.

(2) A copy of the information of a specified personal services attendant who is on file with the division under subsection (c). The division may charge a fee for shipping, handling, and copying expenses.

*As added by P.L.255-2001, SEC.11. Amended by P.L.134-2002, SEC.2; P.L.2-2003, SEC.40.*

#### **IC 12-10-17-12.5**

##### **Maintaining attending physician's written opinion in individual's case file**

Sec. 12.5. The case manager of an individual in need of self-directed in-home care shall maintain an attending physician's written opinion submitted under section 5 of this chapter in a case file that is maintained for the individual by the case manager.

*As added by P.L.134-2002, SEC.3.*

#### **IC 12-10-17-13**

##### **Immunities of division; liabilities of personal services attendants**

Sec. 13. (a) A personal services attendant who is hired by the individual in need of self-directed in-home care is an employee of the individual in need of self-directed in-home care.

(b) The division is not liable for any actions of a personal services attendant or an individual in need of self-directed in-home care.

(c) A personal services attendant and an individual in need of self-directed in-home care are each liable for any negligent or wrongful act or omission in which the person personally participates.

*As added by P.L.255-2001, SEC.11.*

#### **IC 12-10-17-14**

##### **Duties of individuals in need of self-directed in-home care**

Sec. 14. (a) Except as provided in subsection (b), an individual in need of self-directed in-home care is responsible for recruiting, hiring, training, paying, certifying any employment related documents, dismissing, and supervising in the individual's home during service hours a personal services attendant who provides attendant care services for the individual.

(b) If an individual in need of self-directed in-home care is:

(1) less than twenty-one (21) years of age; or

(2) unable to direct in-home care because of a brain injury or mental deficiency;

the individual's parent, spouse, legal guardian, or a person possessing a valid power of attorney may make employment, care, and training decisions and certify any employment related documents on behalf of the individual.

(c) An individual in need of self-directed in-home care or an individual under subsection (b) and the individual's case manager shall develop an authorized care plan. The authorized care plan must

include a list of weekly services or tasks that must be performed to comply with the authorized care plan.

*As added by P.L.255-2001, SEC.11.*

#### **IC 12-10-17-15**

##### **Adoption of rules regarding payments and record keeping**

Sec. 15. The division shall adopt rules under IC 4-22-2 concerning:

- (1) the method of payment to a personal services attendant who provides authorized services under this chapter; and
- (2) record keeping requirements for personal attendant services.

*As added by P.L.255-2001, SEC.11.*

#### **IC 12-10-17-16**

##### **Contracts**

Sec. 16. The individual in need of self-directed in-home care and the personal services attendant must each sign a contract, in a form approved by the division, that includes, at a minimum, the following provisions:

- (1) The responsibilities of the personal services attendant.
- (2) The frequency the personal services attendant will provide attendant care services.
- (3) The duration of the contract.
- (4) The hourly wage of the personal services attendant. The wage may not be less than the federal minimum wage or more than the rate that the recipient is eligible to receive under a Medicaid home and community based services waiver or the community and home options to institutional care for the elderly and disabled program for attendant care services.
- (5) Reasons and notice agreements for early termination of the contract.

*As added by P.L.255-2001, SEC.11.*

#### **IC 12-10-17-17**

##### **Amendment of home and community based services waiver program; payments not considered income**

Sec. 17. (a) The office shall amend the home and community based services waiver program under the state Medicaid plan to provide for the payment for attendant care services provided by a personal services attendant for an individual in need of self-directed in-home care under this chapter, including any related record keeping and employment expenses.

(b) The office shall not, to the extent permitted by federal law, consider as income money paid under this chapter to or on behalf of an individual in need of self-directed in-home care to enable the individual to employ registered personal services attendants, for purposes of determining the individual's income eligibility for services under this chapter.

*As added by P.L.255-2001, SEC.11.*

**IC 12-10-17-18****Demonstration projects; research**

Sec. 18. The division may:

- (1) initiate demonstration projects to test new ways of providing attendant care services; and
- (2) research ways to best provide attendant care services in urban and rural areas.

*As added by P.L.255-2001, SEC.11.*

**IC 12-10-17-19****Adoption of rules regarding implementation; federal waivers**

Sec. 19. (a) The division and office may adopt rules under IC 4-22-2 that are necessary to implement this chapter.

(b) The office shall apply for any federal waivers necessary to implement this chapter.

*As added by P.L.255-2001, SEC.11.*

**IC 12-10-17-20****Adoption of rules regarding complaints, hearings, and appeals**

Sec. 20. The division shall adopt rules under IC 4-22-2 concerning the following:

- (1) The receipt, review, and investigation of complaints concerning the neglect, abuse, mistreatment, or misappropriation of property of an individual in need of self-directed in-home care by a personal services attendant.
- (2) Establish notice and administrative hearing procedures in accordance with IC 4-21.5.
- (3) Appeal procedures, including judicial review of administrative hearings.
- (4) Procedures to place a personal services attendant who has been determined to have been guilty of neglect, abuse, mistreatment, or misappropriation of property of an individual in need of self-directed in-home care on the state nurse aide registry.

*As added by P.L.255-2001, SEC.11.*

**IC 12-10-17-21****Expiration of chapter**

Sec. 21. This chapter expires July 1, 2005.

*As added by P.L.255-2001, SEC.11. Amended by P.L.134-2002, SEC.4.*